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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/622,830 | 10/18/2000 | Manfred Elzenbeck | 1752/49096 | 5406 |

7590 02/14/2002

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EXAMINER

VU, STEPHEN A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3636

DATE MAILED: 02/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/622,830

Applicant(s)

Elzenbeck

Examiner

Stephen Vu

Group Art Unit

3636



☒ Responsive to communication(s) filed on Dec 3, 2001

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 15-41 is/are pending in the application.

Of the above, claim(s) 29-41 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 15-28 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Election/Restriction

1. Applicant's election with traverse of Group IA in Paper No. 9 is acknowledged. The traversal is on the ground(s) that the "differentiating features of both the apparatus and method claims are such that these claims should be examined and allowed in a single application". This is not found persuasive because the applicant has not clearly explained why the apparatus and method claims should be examined in a single application. The applicant's reasoned statement of "differentiating features of both the apparatus and method claims are such" does not provide adequate reasons to support for the examination of both the apparatus and method claims together.

The requirement is still deemed proper and is therefore made FINAL.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

3. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

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4. The disclosure is objected to because of the following informalities: on page 8, line 18, the letter "s" in the sentence appears to be an error.

Appropriate correction is required.

5. The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the reference to "Microfiche Appendix" and the drawings, each of the lettered items should appear in upper case, without underlining or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-References to Related Applications.
- © Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Microfiche Appendix" (see 37 CFR 1.96).
- (e) Background of the Invention.
 - 1. Field of the Invention.
 - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (I) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing (see 37 CFR 1.821-1.825).

It appears that the headings to the respective paragraphs are missing, i.e., Title of the Invention, Cross-References to Related Applications, Brief Summary of the Invention, etc.

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6. A substitute specification in proper idiomatic English and in compliance with 37 CFR 1.52(a) and (b) is required. The substitute specification filed must be accompanied by a statement that it contains no new matter.

Claim Rejections - 35 USC § 112

7. Claims 15-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 15, line 7 and claim 28, line 2, the phrase "knitting or woven fabric" does not clearly provide the metes and bounds of the invention.

Regarding claim 15, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

In claims 19-22, line 2, the phrase "lordosis supports or knee joints" does not clearly provide the metes and bounds of the invention.

8. Claim 15 recites the limitation "the other sections" in line 11. There is insufficient antecedent basis for this limitation in the claim.

9. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

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Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 15-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Abu-Isa et al .

Please note that the applicant had originally submitted claims 1-14 in the application. The applicant filed a preliminary amendment on October 8, 2000 to cancel claims 1-15 and enter new claims 16-42. However, claim 15 never existed. Therefore, the Office's legal staff had to renumber the filed new claims 16-42 to 15-41 to fill the void of claim 15.

Abu-Isa et al show a lounge chair comprising a frame having longitudinal and transverse bars (42,43,21) with spring elements (60,62) held by the frame. The spring elements being elastic textile structure made of woven fabric. The prestress of the textile structure are at right angles to the longitudinal bars.

With claim 16, outer contours of the textile structure are held under prestress at the longitudinal bars and at the transverse bars.

With claim 17, supports (66) are provided beneath the textile structure.

With claim 18, the supports (66) are attached to rails (70) which are movable in a direction of the longitudinal bars.

With claims 19-22, cushions (16) can be placed on the textile structure.

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Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claim 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abu-Isa et al in view of Bartz.

Abu-Isa et al disclose the claimed invention except for the longitudinal bars to be foldable and have articulated axles. Bartz teaches a foldable mattress support comprising an articulated axle (24) for allowing the head section (14) to be pivoted relative to foot section (15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an articulated axle (24) of Bart's invention in lieu of the cross bar (53) of Abu-Isa et al's chair in order to allow the backrest of the chair to be pivoted relative to the seat section.

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Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nissen, Oetiker, Goodman, Capron, Marsh, Fox, and Kim are cited as showing similar types of lounge chair.

16. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Stephen Vu, whose telephone number is (703) 308-1378.



Stephen Vu
Patent Examiner
February 7, 2002



Peter M. Cuomo
Supervisory Patent Examiner
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